

香港醫務委員會  
**The Medical Council of Hong Kong**

---

**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr CHOW Pui Yin Melody (周珮然醫生) (Reg. No.: M17088)

Date of hearing: 8 May 2020 (Friday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS  
(Chairperson of the Inquiry Panel)  
Dr CHEUNG Hon-ming  
Dr CHENG Chi-kin, Ashley  
Mr LAM Chi-yau  
Ms LEE Hong-ye, Connie

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr David KAN of  
Messrs. Howse Williams

Government Counsel representing the Secretary: Mr Louie CHAN

1. The charge against the Defendant, Dr CHOW Pui Yin Melody, is:

“That in or about 26 October 2015, she, being a registered medical practitioner, disregarded her professional responsibility to her patient Madam X (“the Patient”), in that, she offered a speculum examination to the Patient without proper explanation of the procedure.

In relation to the facts alleged, she has been guilty of misconduct in a professional respect.”

## **Facts of the case**

2. The Defendant's name has been included in the General Register from 1 July 2013 to the present. Her name has never been included in the Specialist Register.
3. Briefly stated, the Patient visited the Ngau Tau Kok Jockey Club Clinic ("NTKJCC") on 26 October 2015 and was seen by the Defendant.
4. According to the Patient, whose evidence is not challenged by the Defendant, she told the Defendant at the beginning of the consultation that there were plenty of small nodules around her groin. These small nodules were neither painful nor itchy. She had occasional pain and itchiness over her buttock(s) and ankle(s). Also, her private part was slightly itchy.
5. The Defendant then asked the Patient to lie down on an examination bed and take her pants off from one of her legs for inspection. The Patient indicated to the Defendant the small nodules around her groin and then she felt the Defendant using her hand(s) to inspect her vulval area.
6. Without offering her proper explanation of the procedure, the Defendant proceeded to perform a speculum examination of the Patient's vagina. The Patient repeatedly yelled in pain that she did not want to continue with the procedure. This was however ignored by the Defendant. After the Defendant finished with the procedure, the Patient noticed blood coming from her vagina.
7. The Patient later complained to one Dr LO, the medical officer in charge of NTKJCC, of what the Defendant had done to her. Dr LO told the Patient that her hymen was torn during the speculum examination and thus causing her to bleed. Dr LO also advised the Patient that he could not treat her torn hymen.
8. The Patient subsequently lodged this complaint with the Medical Council.
9. Upon receipt of the Notice of the Preliminary Investigation Committee ("PIC"), the Defendant submitted through her solicitors by a letter dated 5 March 2019 that she admitted that she disregarded her professional responsibility to the Patient in that she offered a speculum examination to her without proper explanation of the procedure; and she did not contest whether such admission amounted to professional misconduct.

### **Burden and Standard of Proof**

10. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove her innocence. We also bear in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.
11. There is no doubt that the allegation against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine the disciplinary charge against her carefully.

### **Findings of the Inquiry Panel**

12. The Defendant admits the factual particulars of the disciplinary charge against her but it still remains for us to consider and determine on the evidence before us whether she is guilty of misconduct in a professional respect.
13. In this connection, we gratefully adopt as our guiding principles the following statements of the law set out by the Court of Appeal in *Dr Chan Po Sum v Medical Council of Hong Kong* [2015] 1 HKLRD 330 at para. 44 (quoting from the judgment of Lord Steyn in *Chester v Afshar* [2005] 1 AC 134):

“[14] ... The starting point is that every individual of adult years and sound mind has a right to decide what may or may not be done with his or her body... Surgery performed without the informed consent of the patient is unlawful...

...

[18] ... A rule requiring a doctor to abstain from performing an operation without the informed consent of a patient serves two purposes. It tends to avoid the occurrence of the particular physical injury the risk of which a patient is not prepared to accept. It also ensures that due respect is given to the autonomy and dignity of each patient.”

14. It is not entirely clear from reading the Patient's first complaint letter, the contents of which are not challenged by the Defendant, whether the Patient had consented to the speculum examination. However that may be, her consent was in our view vitiated by the Defendant's failure to give proper explanation of the procedure before offering speculum examination to the Patient.
15. We are deeply concerned that the Defendant continued with the speculum examination notwithstanding that the Patient had repeatedly yelled in pain that she did not want to continue with the procedure.
16. It is not disputed that the Patient was still a virgin at the time of the consultation. Regrettably, the speculum examination also resulted in tear of the Patient's hymen. In our view, the Defendant's invasion of the Patient's autonomy and dignity is to be condemned.
17. It is clearly stated in the Code of Professional Conduct (2009 edition) that:

“2.1 Consent to medical treatment is part of quality care and also a legal requirement. Consent has to be given voluntarily by the patient after having been informed of the relevant aspects of the medical procedure including the general nature, effect and risks involved.

...

2.4 A patient has the right to refuse to give consent to treatment, provided that the patient is able to exercise his judgment clearly and freely. The refusal should be respected...”
18. For these reasons, we are firmly of the view that the Defendant's conduct had fallen short of the standards expected of registered medical practitioners in Hong Kong. We therefore find her guilty of misconduct in a professional respect as charged.

### **Sentencing**

19. The Defendant has a clear disciplinary record.
20. In line with published policy, we shall give her credit in sentencing for her frank admission and full cooperation throughout the disciplinary proceedings.

21. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
22. Defence solicitor sought to rely on an expert report prepared by a specialist in Obstetrics and Gynaecology and explained to us that the speculum examination was clinically indicated for the Patient. This is however beside the point and we are not going to place any weight on this expert report.
23. As Lord Steyn said in *Chester v Afshar*:  
  
“[14] ... Individuals have a right to make important medical decisions affecting their lives for themselves: they have the right to make decisions which doctors regard as ill advised...”
24. In our view, even if speculum examination was clinically indicated for the Patient, proper explanation of the procedure should be done so as to enable her to make an informed decision whether to accept the offer for speculum examination.
25. We are deeply concerned that the Defendant continued with the speculum examination notwithstanding that the Patient had repeatedly yelled in pain that she did not want to continue with the procedure. And we are minded to remove the name of the Defendant from the General Register without suspension.
26. However, we accept that the Defendant has learnt a bitter lesson. We also accept that the Defendant is a conscientious doctor and has tremendous support from her colleagues.
27. Having considered the nature and gravity of the disciplinary charge and what we have heard and read in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 12 months. We further order that the removal order be suspended for a period of 36 months.

Prof. LAU Wan-yee, Joseph, SBS  
Chairperson of the Inquiry Panel  
The Medical Council of Hong Kong